

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 09-MJ-30048

Plaintiff,

Sean F. Cox

United States District Judge

vs.

JOSE MANUEL CIGARRERO-JAVANA,

Michael Hluchaniuk

United States Magistrate Judge

Defendant.

_____ /

ORDER OF DETENTION PENDING TRIAL

In accordance with the Bail Reform Act, 18 U.S.C. § 3142(f), a detention hearing was held on February 5, 2009. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I-Findings of Fact

- (1) There is probable cause to believe that the defendant has committed the offense charged in the complaint.
- (2) Based on the factors in 18 U.S.C. § 3142(g), there are no conditions or combination of conditions that will reasonably assure the appearance of the defendant as required.

Part II – Written Statement of Reasons for Detention

I find that the credible information submitted at the hearing establishes by a preponderance of the evidence that detention is appropriate in this matter. The information presented at the hearing and as outlined in the criminal complaint indicates that the defendant is a citizen and national of Mexico who is currently living in the Owosso, Michigan area. As outlined in the complaint, the defendant has been deported back to Mexico on three separate occasions, and has subsequently re-entered the United States illegally. Further information presented by the Pretrial Officer reveals that the defendant currently has an outstanding felony warrant pending against him in Minnesota since 2003. The position taken by defendant's counsel in this matter is that the defendant does not pose a risk of flight based upon his continued re-entry into the United States and desire to remain in this country where he claims to have children. However, as noted by the Pretrial Officer, the defendant has used an alias, and a different date of birth on more than one occasion when confronted by law enforcement authorities. It also appears that the defendant does not have a permanent residence within this district.

18 U.S.C. § 3142(g) outlines factors to be considered whether there are conditions of release which will reasonably assure the appearance of the defendant. Among those are the weight of the evidence against the defendant, the persons family ties, past conduct, and criminal conduct. Based upon the information presented at the hearing, I find that the defendant has exhibited a strong inclination

to not follow court orders by his continued re-entry into the United States after having been ordered removed back to Mexico. His prior criminal history, as outlined in the complaint affidavit, and his use of an alias as well as a false date of birth is indicative of a pattern of illegal conduct. For the foregoing reasons I find that the defendant poses a risk of flight should he be released on bond. The defendant shall be detained without bond pending trial in this matter.

Part III – Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a Court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

Date: February 6, 2009

s/Michael Hluchaniuk
Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: Barbara C. Tanase, AUSA, and I hereby certify that I have mailed by United States Postal Service/hand-delivered the paper to the following non-ECF participants: David I. Megdell, 503 S. Saginaw St., Ste. 739, Flint, MI 48502, Pretrial Services Agency and the United States Marshal's Service.

s/James P. Peltier
Courtroom Deputy Clerk
U.S. District Court
600 Church Street
Flint, MI 48502
(810) 341-7850
pete_peltier@mied.uscourts.gov